

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TOMMY LEE JOHNSON,

Plaintiff,

vs.

UNKNOWN DEFENDANTS, et al.,

Defendants.

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Case No. 4:07-CV-719 FRB

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Tommy Lee Johnson for leave to commence this action without payment of the required filing fee. See U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court will grant plaintiff provisional leave to file this action.

The Complaint

Plaintiff, a prisoner currently confined at the Fort Des Moines Correctional Center in Des Moines, Iowa, seeks monetary relief pursuant to 42 U.S.C. § 1983. Plaintiff's allegations arise from his confinement at the Polk County Jail in Des Moines, Iowa. Named as defendants are "Unknown Defendants," "Warder of Davies DeKalb County Regional Jail," Frank T. Scarcelo, and Betheny Bridewell Detention Facility. Plaintiff's allegations concern the alleged violation of his constitutional rights.

Discussion

Pursuant to 28 U.S.C. § 1391(b), venue for this action is proper where (i) any defendant resides, if all the defendants reside in the same state; (ii) a substantial part of the events or omissions giving rise to the claim occurred; or (iii) where any defendant may be found, if there is no district in which the action may otherwise be brought. Plaintiff is challenging the prison conditions and policies

in Polk County, Iowa, which is located in the Southern District of Iowa. See 28 U.S.C. § 95(b)(1). None of the named defendants can be found in the Eastern District of Missouri, and the majority of defendants can be found in the Southern District of Iowa. Therefore, venue is not proper in the Eastern District of Missouri.

Pursuant to 28 U.S.C. § 1406(a), the District Court in which is filed a case laying venue in the wrong district may dismiss the case or, in the exercise of its discretion and in the interest of justice, transfer the petition to any District Court in which such action could have been brought. In cases involving a plaintiff who is proceeding pro se and in forma pauperis, especially a prisoner, the usual practice is to transfer the case to the proper district. Therefore, this action shall be transferred to the United States District Court for the Southern District of Iowa. Because venue is not proper in the Eastern District of Missouri, no determination has been made as to whether the complaint is frivolous or fails to state a claim, or both, pursuant to 28 U.S.C. § 1915(e)(2)(A)(B).

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **PROVISIONALLY GRANTED**, subject to modification by the Southern District of Iowa upon transfer.

IT IS FURTHER ORDERED that the Clerk of Court shall not issue process or cause process to issue upon the complaint, because this action will be transferred to the Southern District of Iowa.

An appropriate order of transfer shall accompany this order and memorandum.

Dated this 8th day of May, 2007.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE